

## CHAPTER 12

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## CHAPTER 12

### PASRR DETERMINATIONS AND APPEALS

Based on Level II findings contained in the PAS and RR case documentation materials submitted to the State for review and determination, the State MI or MR/DD authority will issue a determination of:

- a) whether an individual requires the level of services provided by a NF;
- b) whether specialized services are needed; and
- c) if NF is approved, whether MI and/or MR/DD services of lesser intensity than specialized services are needed.

#### 12.1 PASRR DETERMINATION CRITERIA

At a minimum, the PASRR Level II assessment process will result in the following findings:

- a) the individual does/does not have a need for NF level of services;
- b) the individual has/does not have a condition of MI and/or MR/DD as defined for PASRR purposes;
- c) the individual does/does not need specialized services as defined for PASRR purposes; and
- d) the individual does/does not need services of a lesser intensity for his/her condition of MI and/or MRDD, specifying the particular service needs.

##### 12.1.1 Determination Authorities

The following entities are authorized to make the final PASRR determination:

- a) for all PAS and MI-RR, the State PASRR Unit will review Level II case packets and make the final determination; and
- b) for MR/DD-RR and MI/MR/DD-RR cases, the local D&E Team will review Level II case packets and make the final determination.

##### 12.1.2 Appropriate Placement

Placement of an individual with MI and/or MR/DD in a NF is considered appropriate only when:

- a) the individual's needs are such that he or she meets the minimum standards for NF admission or residence; and
- b) the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted.

Determinations regarding appropriate placement will be made:

- a) on an individual basis, taking into account the needs of the individual; and
- b) following application of the criteria:
  - 1) under 450 IAC 1-3-1 and 1-3-2 for MI; and
  - 2) under 450 IAC 1-3-1 for MR/DD.

A caveat may be entered on the IPAS 4B Determination Form concerning placement needs when an individual requires specific service consideration, for example, care in an Alzheimer's Unit, problem behaviors, or monitoring for possible suicidal ideation.

##### 12.1.3 Placement Categories

All determinations, both categorical and final, will be recorded in the resident's NF record.

- **Categorical Determination**

Categorical determinations are those decisions which take into account that certain diagnoses, levels of severity of illness, or need for a particular service clearly indicate that admission to or residence in a NF is normally needed, and that provision of specialized services is not normally needed. Advance group categorical determinations include Exempted Hospital Discharge, Respite Care and APS. (See Chapter 13.)

The NF will maintain copies of the documents authorizing temporary admission on the individual's chart:

- a) Level I;
- b) PASRR Categorical Determination for Respite and APS (Appendices U and W) form; and

- c) Application for Long-Term Care Services.

NOTE: Requirements for these categorical determinations differ from the categories of temporary admission under Indiana's IPAS program. They are more restrictive and require authorization on specific PASRR forms.

- **Individualized Determinations**

Individualized determinations are those decisions based on more extensive individualized evaluations. These individualized determinations include (a) the evaluation and findings of need for NF level of services (PASRR/NF); and (b) whether an individual with MI (PASRR/MI) and/or MR/DD (PASRR/MR/DD) requires specialized services.

- **Final Determination**

The PASRR final determination for individuals with MI will be made:

- a) by the designated State mental health authority (State PASRR Unit); and
- b) be based on an independent physical and mental evaluation performed by a person or entity other than the designated State mental health authority.

The PASRR final determination for individuals with MR/DD will be made by the designated State MR/DD authority (State PASRR Unit), without any requirement for independent evaluation other than the D&E Team.

The final determination is:

- a) (or PAS) included on the PAS/PASRR Assessment Determination Form 4B; and
- b) (for PASRR/MI RR) issued in the form of an RR Determination Letter; and
- c) (for PASRR/MR/DD RR) issued as a certification form and an RR Determination Letter.

NOTE: The NF should maintain all IPAS/PASRR documentation in the same section of the resident's chart, including, but not limited to, the IPAS application, Level I, Level II, other assessment documents, PAS 4B, RR Determination Letter, etc.

### 12.1.3.1 PAS/PASRR Determinations

Can be admitted to a NF if the applicant has been found:

- 1) to meet the requirements of need for NF level of services under 450 IAC 1-3-1 or 1-3-2 (See Chapter 4.6.1.); and
- 2) does not require specialized services (See Chapter 13.5.).

Cannot be admitted to a NF: the applicant has been determined to NOT meet the requirements for NF need for care, regardless of the need for specialized services.

### 12.1.3.2 RR/PASRR Determinations

- a) Can be considered appropriate for continued placement in a NF when the resident:

- 1) has been determined to meet the need for NF level of services; and
- 2) does not need specialized services;

- b) Cannot be considered appropriate for continued placement in a NF and will be discharged to an appropriate setting when the resident:

- 1) does NOT have a need for NF care; and
- 2) has resided in a NF for less than 30 consecutive months (short-term residents);
- 3) regardless of the need for specialized services.

- c) Cannot be considered appropriate for continued placement in a NF and will be discharged, regardless of the length of his or her stay (short or long-term residents), when the resident:

- 1) does NOT have a need for NF level of services; and
- 2) does NOT require specialized services.

- d) For MR/DD residents, may choose to remain in the NF even though the placement would otherwise be inappropriate when the resident:

- 1) does NOT have a need for NF level of services;
- 2) but DOES require specialized services; and

- 3) has continuously resided in a NF for at least 30 consecutive months before the date of determination inappropriate (long-term resident). The resident may choose to continue to reside in the facility and receive specialized services, or to receive specialized services in an alternative appropriate institutional or noninstitutional setting. (NOTE: For persons meeting this requirement who choose to remain in the NF setting, specialized services will be provided in the NF.)
- e) For MI residents, specialized services are equivalent to provision of inpatient psychiatric care and are not typically provided within or by a NF due to the duration and/or intensity of the MI specialized services.

#### 12.1.4 Level II and MDS

Federal regulations require that:

- a) the CMHC or D&E Team review the NF Minimum Data Set and Resident Assessment/ (MDS and RA) as part of the PASRR Level II assessment; and
- b) the NF utilize the PASRR Level II with the resident's individualized plan of care for residents with MI and/or MR/DD conditions.

Combining these two processes will produce a more comprehensive, multidisciplinary approach to the individual's care plan. It is the NF's responsibility to assure that the Level II and the MDS assessments are used interactively. The MDS is updated quarterly or with a significant change in the resident's condition or treatment.

The CMHC or D&E Team should:

- a) review and utilize information and documentation available at the NF, including the RA/MDS, for purposes of the Level II assessment;
- b) bring conflicting or inaccurate information to the attention of the NF and discuss it with them.

NOTE: The NF, with the attending physician and/or NF medical director, will need to reconcile discrepancies between the NF's charted MI diagnosis and the diagnosis determined by the Level II assessment. The physician should feel free to contact the Level II assessor or psychiatrist at the CMHC to discuss questions or concerns.

#### 12.1.5 Level II Termination

- For PAS: The PAS/PASRR case:
  - a) may be terminated at any point it has been determined that there is no need for NF level of services; and
  - b) for applicants who are determined to not need NF level of services, the specialized services determination does not need to be made. (See Chapter 5.2.)

NOTE: For MR/DD cases, however, there must always be a finding of both need for NF level of services and need for specialized services.

- For RR: An RR/PASRR case may NOT be terminated as soon as it is found that there is no need for NF care. The determination for RR must always include both parts:
  - a) a determination of need for NF level of services; and
  - b) a finding of need for specialized services.

Cases may also be terminated early due to, but not limited to, the following reasons:

- a) death prior to determination;
- b) transfer to another NF;
- c) written voluntary withdrawal of the application for NF admission; or
- d) refusal to cooperate in a timely manner (within the legally defined time frames for case processing and determination).

NOTE: Regulations state that a Medicaid-certified NF must not admit or retain any individual who requires PASRR Level II, but has not had one. Therefore, an individual cannot refuse Level II and remain in a NF. When an individual or his representative refuses to cooperate in Level II, the Level II assessor should immediately notify the NF DON or administrator of the individual's refusal, and the NF should counsel the individual or representative on the consequences of refusal.

Any termination of the PASRR Level II assessment must be clearly documented in the case record. PASRR/MI cases will use the "Inappropriate Referral" form and submit it to either the IPAS agency or State PASRR Unit, as appropriate.

When an IPAS case is terminated after referral for Level II has been made:

- a) the IPAS agency should immediately notify the CMHC or D&E Team of the case status; and
- b) the Level II assessment should also be terminated at the point notice is received from the IPAS agency; and
- c) whatever documentation has been completed will be retained in the file.

#### 12.1.6 NF Retention of Level I and Level II

Federal regulations require that:

- a) the NF receive a copy of any applicable Level I screen, with the certification of for need for Level II at the bottom; and/or
- b) the Level II assessment with all supporting documentation; and
- c) the PASRR Letter/Certificate of Determination; and
- d) retain them on each resident's chart;

#### 12.1.7 Transfer of Level I and Level II With Resident

Resident transfers, with or without an intervening hospital stay, require transfer of the most current Level I and Level II assessment documentation to the new, admitting NF.

It is the responsibility of:

- a) the prior NF to provide copies of these assessments to the new NF; and
- b) the new or admitting NF to request and review these assessments as part of the admission, MDS, and care planning processes.

#### 12.1.8 Time Limit Level II Determination Is Effective

The PASRR Level II assessment and findings are effective until there is a substantial change in the applicant's or resident's:

- a) MI mental health condition; or
- b) MR/DD functioning status or medical condition.

- For PAS-MI, however, the IPAS assessment and determination finding is:
  - a) only effective for ninety (90) days from the date of the PAS 4B Notice of Determination; and
  - b) must be updated or redone when an individual is not admitted to a NF within ninety (90) days of the PAS 4B issuance. (See Chapter 5.5.)
- For PAS-MR/DD, the Level II assessment and determination are effective for one (1) year, unless there has been a substantial change in functioning status or medical condition.

When the ninety (90) days has expired, the applicant or NF will contact the IPAS agency to update or complete a new IPAS assessment and finding. For PASRR cases, the IPAS agency will:

- a) review whether there has been a significant change in mental and/or MR/DD condition;
- b) if no change, the IPAS agency will document its finding; and
  - 1) indicate that the information contained in the Level II is current to the individual's condition on page 1 of the MI Level II; and
  - 2) resubmit the case record for a PASRR determination; but
- c) if there is a change, the IPAS agency will provide the information to the CMHC or D&E Team, which will decide:
  - 1) whether a new Level II should be completed; or
  - 2) whether sections of the Level II should be updated; or
  - 3) that another Level II is not needed and whether to:
    - i) issue an Inappropriate Referral form or letter/statement; or

- ii) have the IPAS agency update the original PASRR/MI Level II assessment by certifying, "No change" or "Remains Same," with the reviewer's initials, affiliation, and date of certification prominently entered at the top of the first page.

When a new Level II is required, the IPAS agency will make a clear notation on page 1 of the new Level II showing that this is a reassessment and the reason for it.

- For RR, the Level II assessment and determination remain effective until the individual, MI and/or MR/DD, has a significant change in mental status and/or MR/DD condition. (Also see Chapter 14 of this Manual.)

## 12.2 APPEALS, RECONSIDERATIONS, AND JUDICIAL REVIEW

An individual has the right to:

- a) "appeal" an adverse action and request a fair hearing when he/she disagrees with the PASRR determination; and/or
- b) request a "reconsideration" of an adverse finding when there is documentation pertinent to the reason for the denial which was not previously submitted.

Reconsideration using additional documentation follows a process similar to that for the original decision and can be processed more quickly than an appeal. An appeal, however, is a separate, formal process which usually requires more time. An appeal reviews whether the determination was correct based on the documentation submitted.

### 12.2.1 Reconsideration

An individual may request "reconsideration" of an adverse finding:

- a) using pertinent case documentation, not previously submitted, provided after the final determination;
- b) submitted by the applicant or the NF and/or attending physician acting on behalf of the individual;
- c) requested as soon as the additional documentation is identified, but no later than within thirty (30) days of the effective date of the determination.

When there is documentation, it may be advisable to request both an appeal and reconsideration at the same time, due to the 30-day time constraint for filing an appeal request. Reconsideration does not replace the appeals process, but may enhance it.

When reconsideration upholds the original adverse finding, an appeal will already be in process and time is not lost. If, however, the reconsideration reverses the original determination, the Hearing and Appeals Section will be notified to cancel the appeal.

Reconsideration is requested:

- a) for MI: through the IPAS agency for need for NF level of services (Level of Care) issues; and
- b) for MR/DD: through the BDDS Field Office for issues involving specialized services;
- c) by resubmitting:
  - 1) the entire original IPAS case record;
  - 2) with new documentation clearly flagged;
  - 3) to the State PASRR Unit;
- d) clearly marked as a "Request for IPAS/PASRR Determination Reconsideration."

### 12.2.2 Appeals

Information on filing an appeal is printed on all determination notices for PAS and RR:

- a) for PAS, it is on both the front and back of the PAS 4B form (Appendix P); and
- b) for RR, it is in the body of the RR Determination Letters (Appendix HH).

The appeal request will be submitted within thirty (30) days of the date of the determination notice.

An appeal is requested:

- a) by sending a letter:
  - 1) with the individual's signature;

- 2) to the Indiana Family and Social Services Administration, Division of Family and Children, Hearings and Appeals, 402 W. Washington Street, Room W-392, Indianapolis, Indiana 46204;
- b) containing:
  - 1) the individual's address and a telephone number where he or she can be contacted; and
  - 2) a copy of the notice with the adverse action being appealed.

If the individual is unable to write the letter him/herself, someone may provide assistance in requesting the appeal.

The Division of Family and Children will notify the individual and the IPAS agency which issued the determination in writing of the date, time, and place for the hearing. When the individual has been admitted to a NF in another IPAS agency's area, the IPAS agency with the case record will forward it to the NF's local IPAS agency for representation at the hearing.

Prior to, or at the hearing, the individual or his representative has the right to examine the entire contents of the case record.

### 12.2.3 Representation At Appeal Hearings

The individual may represent him/herself at the hearing or authorize a representative such as an attorney, a relative, a friend, or other spokesman to do so. At the hearing, there is a full opportunity to bring witnesses, establish all pertinent facts and circumstances, advance any arguments without interference, and question and refute any testimony or evidence presented.

For PAS:

- a) the IPAS Agency which has the complete case file will provide case documentation, clarification, and evidence needed upon request of the State PASRR program for preparation of testimony for PASRR appeal hearings; or
- b) if the applicant has entered a NF in another IPAS agency's catchment area:
  - 1) the original IPAS agency will forward a copy of all case documents to the NF's local IPAS agency; and
  - 2) the second IPAS agency will provide representation at the hearing;
- c) the local OFC Office will act as agent of the Medicaid program representing the PASRR finding at the hearing and
- d) OMPP, the State PASRR program, the BDDS Field Office and/or the D&E Team may also provide written testimony for the appeal hearing.

For RR:

- a) the local OFC Office will act as agent of the Medicaid program representing the State PASRR determination at the hearing;
- b) additional documentation or information may be presented to the State PASRR program:
  - 1) by the CMHC for support or clarification of the PASRR/MI determination; and
  - 2) by the D&E Team to address the PASRR/MR/DD determination.

### 12.2.4 Judicial Review

After exhausting all administrative remedies, the individual may obtain judicial review. Information on how to obtain judicial review will be provided to the individual as part of the appeal determination notice.

## 12.3 CASE RECORDS

### 12.3.1 Availability of Level II to Physicians, Hospitals, and Individuals

The PASRR Level II assessment and determination are available to the applicant's or resident's attending physician, the discharging hospital for an individual who has been hospitalized, and the applicant or resident, the guardian or health care representative.

Release of PASRR Level II assessments and notices of determination to attending physicians and staff of discharging hospitals is authorized under Federal Regulations 42 CFR 483.128(l) and 42 CFR 483.130(k). A separate release of information from the patient is not required for pertinent requests.



- **Attending Physician:** An "attending" physician is considered to be that physician who has primary responsibility for the medical care of the individual.
- **Discharging Hospital:** The "discharging" hospital is that hospital which provided acute inpatient care and in which the individual currently resides or from which he or she was recently discharged.

Following State review and determination, the complete PASRR Level II case is sent:

- a) to the NF for review and retention on the resident's NF chart for individual's admitted to a NF; and
- b) to the IPAS agency or BDDS Field Office which processed the Level II case for individuals who are not admitted to a NF.

These documents are available to the attending physician and discharging hospital for review and/or copying, upon request

- a) at the admitting NF; or
- b) for individuals who are not admitted to a NF, at the IPAS Agency or BDDS Field Services Office which processed the Level II case.

The NF has the responsibility to:

- a) make the Level II evaluation and determination part of the Resident Assessment/Minimum Data Set (RA/MDS) and care planning/case conferencing process; and
- b) provide the Level II evaluation and determination information to the individual or resident and his or her legal representative for RR.

For PAS, the IPAS agency will provide to the individual or resident and his or her legal representative this information with a copy of the Level II case materials, as appropriate, with the results of the PASRR Level II assessment and determination.

### 12.3.2 Confidentiality of Case Records

All authorized entities with access to IPAS/PASRR case records must maintain confidentiality following all pertinent state and federal laws and regulations.

### 12.3.3 Disposition of Case Records

At the conclusion of the PASRR determination, the appropriate entity must assure that the entire case record packet on which the PASRR determination is based is sent to the appropriate NF.

When the case record is faxed, the State PASRR Unit will send only a copy of the final determination:

- a) PAS 4B form, to the appropriate IPAS Agency; and
  - b) RR determination letter, to the CMHC or D&E Team/ for RR;
- for inclusion in the agencies' case file. The D&E Team will forward a copy to the BDDS Field Office.

**NOTE:** The State PASRR Unit does not retain a copy of the case record. The IPAS agency, CMHC, or D&E Team/BDDS Field Office keeps a copy on file.

For YRR or situations where the original case documents are mailed instead of faxed to the State PASRR Unit, the State PASRR Unit will:

- a) fax the determination to the IPAS agency, CMHC or D&E Team; and
- b) directly mail the original case record to the indicated NF.

Upon receipt of the determination, the local agency will:

- a) put the determination with the case record;
- b) make a copy for the agency's file; and
- c) send the entire case record to the applicable NF.

The NF must assure that:

- a) the case record and determination are retained on the client's active chart; and

- b) if the resident transfers to another NF, a copy of the entire Level II case record is provided to the new NF prior to, but no later than, the time of NF transfer.

The receiving NF must review all pertinent documents addressing a resident's condition, including the PASRR Level II, when determining whether the NF can meet the patient's needs.

#### 12.3.4 Retention of Case Records

The IPAS Agency, CMHC, BDDS Field Office and D&E Team must retain legible copies of all case documents pertinent to the PAS and/or RR portions for which they are responsible for a period of at least three (3) years from the date of most recent case action. For all PASRR cases, the signature date of the designated determination authority will be the determination date. (Also see Chapter 5.8.)

If a reconsideration or appeal is processed, the most recent signature date of the designated determination authority will be used.

This documentation provides support for future audit purposes. Copies of these materials must be made available to OMPP, the State PASRR Unit, and state or federal surveyors or auditors upon request. As needed, copies of case documentation must be available for appeal hearings or audit purposes.

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